



## TAX FLASH

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### Tax Investigation Framework 2020 (Revised)

The Inland Revenue Board ["IRB"] has recently issued the *revised Tax Investigation Framework 2020* to replace the previous Tax Investigation Framework issued on 15<sup>th</sup> May 2018 with some updates as follows:-

- i. Investigation Procedures [Paragraph 7.1]
  - Request for documents and information
    - Investigations can be carried out by issuing letters requesting for documents and information from the taxpayer, tax agent and third party.
    - Taxpayer may be required to give information and oral explanation at IRB offices.

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- IRB officers may also visit the taxpayer's business premises by way of a written notification given prior to the visit.
- ii. Offences and Penalties [Paragraphs 10.1.2 and 10.1.3]
  - Failure to Furnish Return or Give Notice of Chargeability
    - The IRB has clarified that a taxpayer who defaults in furnishing a return for a period of 2 years of assessment or more shall on conviction is also required to pay a special penalty of treble the amount of tax which has been undercharged.
    - It is also clarified that where no prosecution has been instituted in respect of the failure to furnish a return or give notice of chargeability under Sections 112(1) or 112(1A) of the Income Tax Act 1967 ["the Act"], the Director General of Inland Revenue may require the taxpayer to pay a penalty equal to treble the amount of tax which has been undercharged pursuant to Section 112(3) of the Act.
- iii. Investigation Under Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ["AMLATFPUAA"] [Paragraph 13.6]
  - The IRB has clarified that in the case of a continuing offence, a person who, if convicted under Section 34 of the AMLATFPUAA (obstruction to exercise powers of an investigation officer) shall be liable to a further fine not exceeding RM3,000 for each day during which the offence continues after conviction.

The above revised Framework takes effect from 1<sup>st</sup> January 2020.

**Note:** For further information on the previous Tax Audit Framework 2018, kindly refer to our [Tax Flash – June 2018 issue](#).

### **Tax Exemption on Income Derived by Angel Investor**

Pursuant to the Income Tax (Exemption) (No. 3) Order 2014, exemption is granted to an angel investor in respect of the aggregate income for the basis period for the second year of assessment following year of assessment in which an investment is made by the angel investor in an investee company. The amount of income exempted shall be an amount equal to the amount of investment made in that investee company. An extension of the application to the Minister of Finance to make an investment in an investee company was previously granted until 31<sup>st</sup> December 2020 in accordance with the Income Tax (Exemption) (No. 3) 2014 (Amendment) Order 2017.

Following the 2020 Budget announcement, the [Income Tax \(Exemption\) \(No. 3\) 2014 \(Amendment\) Order 2019](#) has been gazetted to allow further extension of 3 years, i.e. until 31<sup>st</sup> December 2023 for an angel investor to make an application to the Minister of Finance to make an investment in an investee company.

**Note:** For further information relating to the exemption of income under the previous Income Tax (Exemption) (No. 3) Order 2014 (applicable from 1<sup>st</sup> January 2013 to 31<sup>st</sup> December 2017) and Income Tax (Exemption) (No. 3) 2014 (Amendment) Order 2017 (applicable from 1<sup>st</sup> January 2018 to 31<sup>st</sup> December 2020), please refer to our [Tax Flash - July 2014](#) and [Tax Flash - February 2018 issues](#) respectively.

## Tax Exemption on Value of Benefit Received by Employee for PTPTN Educational Loan Paid on Behalf by Employer

Under the Income Tax (Exemption) (No. 8) Order 2019, an employee is granted exemption from payment of income tax in relation to the value of benefit received by the employee for the amount of *Perbadanan Tabung Pendidikan Tinggi Nasional* ["PTPTN"] educational loan paid on behalf by the employer during the period from 1<sup>st</sup> January 2019 to 31<sup>st</sup> December 2019.

The *Income Tax (Exemption) (No. 8) (Amendment) Order 2019* has recently been gazetted to extend the exemption granted to the employee for another 2 years i.e. in respect of the payment of loan made by the employer during the period from 1<sup>st</sup> January 2020 to 31<sup>st</sup> December 2021.

**Note :** For more information in relating to the above exemption, kindly refer to our *Tax Flash – August 2019 issue*.

## Double Deduction for Expenditure Incurred for the Provision of an Approved Internship Programme

Pursuant to the Income Tax (Deduction for Expenditure Incurred for the Provision of an Approved Internship Programme) Rules 2012, a double deduction of expenditure is given to a person resident in Malaysia for conducting an approved internship programme for students pursuing full-time degree programmes in higher educational institutions for year of assessment ["YA"] 2012 until YA 2016.

In the 2015 Budget announcement, it was proposed that the approved internship programme be extended to include full-time students pursuing vocational and diploma courses for YA 2015 and YA 2016. This was extended for another 3 years i.e. until YA 2019 as proposed in the 2017 Budget announcement.

In the recent 2020 Budget announcement, it was proposed that the approved internship programme be expanded to include students in all academic field with further extension of 2 years i.e. until YA 2021.

To legislate the above proposals as announced in the previous budgets, the *Income Tax (Deduction for Expenditure Incurred for the Provision of an Approved Internship Programme) Rules 2019* has been gazetted to allow double deduction for expenditure incurred by a person who is a resident in Malaysia for the provision of an approved internship programme conducted in Malaysia. The approved internship programme must be for a minimum period of 10 weeks as approved by TalentCorp in collaboration with the Ministry of Higher Education and the allowable expenses are as follows: -

- i. internship monthly allowances of not less than RM500 paid to the students;
- ii. expenses incurred for the provision of training for the students; and
- iii. expenditure incurred on meal, travelling and accommodation for the students during the internship programme.

The total amount of deduction allowable under (ii) and (iii) above for each student is restricted to RM5,000 for a year of assessment. A letter from TalentCorp confirming that the internship programme conducted is an approved internship programme is required in support of the above double deduction claim.

The above Rules shall apply to the qualified person who conduct or has conducted;-

- an approved internship programme for a student pursuing a diploma programme in a higher educational institution and a student pursuing a qualified course being a vocational programme (minimum Malaysian Skills Certificate Level 4) in YA 2015 until YA 2016; and
- an approved internship programme for a student in YA 2017 until YA 2021.

**Note:** For further information on the previous *Income Tax (Deduction for Expenditure Incurred for the Provision of an Approved Internship Programme) Rules 2012*, kindly refer to our *Tax Flash – June 2012 issue*.

## Deduction for Payment of Educational Loan of PTPTN by Employers on Behalf of Employees

Following the 2020 Budget announcement, the *Income Tax (Deduction for Payment of Educational Loan of PTPTN by Employers on Behalf of Employees) (Amendment) Rules 2019* has been gazetted to extend the deduction granted to an employer for the amount of PTPTN educational loan paid on behalf of his employee for another 2 years i.e. during the period from 1<sup>st</sup> January 2020 to 31<sup>st</sup> December 2021.

It is noteworthy that the amendment rules clarify that the above deduction granted to employers applies to those with sources of business income [previously stated as income of registered business only based on the previous Income Tax (Deduction for Payment of Educational Loan of PTPTN by Employers on Behalf of Employees) Rules 2019.

The above Rules have effect from YA 2019 until YA 2022.

**Note:** For further information on the above, kindly refer to our *Tax Flash – August 2019 issue*.

## Revision to Restriction of Tax Deduction on Payments Made to Labuan Company by Resident

Following the Income Tax (Deductions Not Allowed for Payment Made to Labuan Company by Resident) Rules 2018 gazetted on 31<sup>st</sup> December 2018 which came into operation on 1<sup>st</sup> January 2019, the Labuan Financial Services Authority has issued a *circular* which provides for revision to the amount not allowed for tax deduction in respect of the following payments made by a resident to a Labuan company:-

Type of Payments	Amount Not Allowed for Deduction	
	Current	Revised
Interest payments	33% of the amount of payment	25% of the amount of payment (including all payments relating to financing e.g. commission, facility and upfront fees)
Lease rental payments	33% of the amount of payment	25% of the amount of payment
Other payments	97% of the amount of payment	Status Quo

The non-deductibility rules shall not apply to the following:-

- Transactions between Labuan International Commodity Trading Company (LITC) and Malaysian residents;
- Transactions between Labuan entities that have opted to pay tax under the Act and Malaysian residents;
- Transactions between Labuan entities that are paying taxes under the Act and Labuan entities that are paying taxes under the Labuan Business Activity Tax Act 1990; and
- Payment made by a resident general insurer to a Labuan (re)insurer (as announced earlier per the Labuan Investment Committee (LIC) Pronouncement 1-2019).

The above changes have effect from 1<sup>st</sup> January 2019

**Note:** For further information relating to restriction of tax deduction on payments made to Labuan company by resident, kindly refer to our *Tax Flash – February 2019 issue*.

## Stamp Duty Exemption for the Purchase of Residential Property under RTO Scheme

Following the 2020 Budget announcement, the *Stamp duty (Exemption) (No. 4) Order 2019* has been gazetted to provide exemption from stamp duty for the purchase of residential property under Rent-To-Own [“RTO”] Scheme. The exemption from stamp duty applies to the instruments of transfer executed at the following stages under the RTO scheme with the conditions that:-

- Transfer of residential property from property developer to financial institution
  - The sale and purchase agreement is executed from 1<sup>st</sup> January 2020 to 31<sup>st</sup> December 2022
- Transfer of residential property from financial institution to an individual (i.e. a purchaser or co-purchaser who is a Malaysian citizen)
  - The RTO agreement for rental of the property is executed from 1<sup>st</sup> January 2020 to 31<sup>st</sup> December 2022 and the period of rental must not exceed 5 years; and
  - The tenant may opt to purchase the residential property after a rental period of one (1) year and the sale and purchase agreement must be stamped

The above exemption is applicable to one unit of residential property priced up to RM500,000 and the application must be accompanied by a statutory declaration by the individual confirming that the individual has never owned any residential property including a residential property which is obtained by way of inheritance or gift, which is held either individually or jointly.

“Residential property” means a house, a condominium unit, an apartment or a flat, purchased or obtained solely to be used as a dwelling house, and includes a service apartment for which the property developer has obtained a housing developer’s licence and an advertisement and sale permit under the Housing Development (Control and Licensing) Act 1966.

“RTO Scheme” means an alternative financing scheme under the Government of Malaysia which is regulated by the National Housing Department, Ministry of Housing and Local Government to assist home ownership wherein a residential property is initially purchased and rented out by a financial institution and subsequently the tenant is given an option to purchase that residential property based on *Shariah* compliant principles.

## Guide on Electricity Delivery and Distribution Services

The *Guide on Electricity Delivery and Distribution Services* as at 1<sup>st</sup> January 2020 (currently only made available in *Bahasa Malaysia*) was published by Royal Malaysian Customs Department [“RMCD”] on 31<sup>st</sup> January 2020.

## Service Tax Policies

RMCD has published the following service tax policies on 13<sup>th</sup> January 2020:-

- *Service Tax Policy No. 1/2020 – Expansion of Scope of Taxable Service;*
- *Service Tax Policy No. 2/2020 – Service Tax Exemption on Imported Taxable Service;*
- *Service Tax Policy No. 3/2020 – Service Tax Policy on Claiming a Refund by Offsetting Method on Service Tax on Imported Digital Service Provided by Foreign Registered Person;*
- *Service Tax Policy No. 4/2020 – Service Tax on Online Distance Learning Services;*
- *Service Tax Policy No. 5/2020 – Service Tax on Online Newspaper, Online Journals and Periodicals;*  
and
- *Service Tax Policy No. 6/2020 – Service Tax Treatment on Provision of Training and Coaching Services for Disabled Person.*

The salient points pertaining to the abovementioned service tax policies are as summarised below:-



- i. Service Tax Policy No. 1/2020 – Expansion of Scope of Taxable Service
- This policy is in relation to the amendments to Group G and Group I of column (2), First Schedule of the Service Tax Regulations 2018.  
*Note : Kindly refer to our [Tax Flash – January 2020 issue](#) for further details.*
  - Registration and Effective Date to Charge Service Tax
    - New taxable person
      - Any person who provides the new taxable service whereby the total value of the taxable service in the month of January 2020 and the eleven months immediate preceding January 2020 has exceeded RM500,000 shall apply for registration not later than 29<sup>th</sup> February 2020.
      - The registration will take effect from 1<sup>st</sup> March 2020 and the registered person shall start charging service tax on the taxable service on the even date.
- ii. Service Tax Policy No. 2/2020 – Service Tax Exemption on Imported Taxable Service
- Effective 1<sup>st</sup> January 2020, a registered person will be granted exemption by the Minister of Finance to account and pay service tax based on the self-recipient accounting in respect of the following imported taxable services:-
    - Taxable services under Group G, Column (2), First Schedule to the Service Tax Regulations 2018 [excluding Items (j) and (k)]; and
    - Advertising services under Item 8, Group I, First Schedule to the Service Tax Regulations 2018.
  - A registered person will be exempted from payment of service tax on the abovementioned imported taxable services subject to the following conditions:-
    - He is a **registered person** under the Service Tax Act 2018 and account for service tax using SST-02 form;
    - Providing the **same services** to its clients as the imported taxable services acquired from his service provider(s);
    - The imported taxable service is for the furtherance of business and **not acquired for personal consumption**; and
    - Has **made payment** for the imported taxable service to the service provider.
  - The exemption is only applicable to imported taxable service **acquired from 1<sup>st</sup> January 2020** and does not cover imported digital services acquired from foreign registered persons.
  - If the imported taxable service acquired is **spanning before 1<sup>st</sup> January 2020 and after 1<sup>st</sup> January 2020**, the local registered person is required to account and pay service tax on imported taxable service for the period **up to 31<sup>st</sup> December 2019**. When the service tax becomes due and payable, the registered person may determine the amount of service tax due and payable using pro-rate method.
  - The value of the imported taxable service that has been exempted is **not required** to be declared in item 18(c) of SST-02 form.
- iii. Service Tax Policy No. 3/2020 – Service Tax Policy on Claiming a Refund by Offsetting Method on Service Tax on Imported Digital Service Provided by Foreign Registered Person
- Effective 1<sup>st</sup> January 2020, a local service provider who has paid service tax to a Foreign Service Provider [“FSP”] on imported digital services is allowed to claim a refund granted under Section 34(3)(b) of the Service Tax Act 2018 via a mechanism called offsetting method, based on the actual amount paid.
  - The local service provider will be allowed to claim a refund of service tax subject to the following conditions:-
    - He is a **registered person** under the Service Tax Act 2018;
    - Providing the **same digital service** as the imported digital service acquired from FSP;
    - The imported digital service must be **provided by a Foreign Registered Person** [“FRP”] under the Service Tax Act 2018; and
    - Payment of **service tax has been made** to FRP.
  - The mechanism of claiming the refund via the **offsetting method** is to be **made using SST-02 form [through item 13(c)]** based on the **actual amount of service tax paid to FRP**.

- iv. Service Tax Policy No. 4/2020 – Service Tax on Online Distance Learning Services
  - The Minister of Finance has prescribed certain online distance learning services provided by overseas and local service providers as not subject to service tax effective 1<sup>st</sup> January 2020.
- v. Service Tax Policy No. 5/2020 – Service Tax on Online Newspaper, Online Journals and Periodicals
  - The Minister of Finance has prescribed certain online newspapers, online journals and periodicals provided by overseas and local service providers as not subject to service tax effective 1<sup>st</sup> January 2020.

## Minimum Wages

Following the 2020 Budget announcement, the *Minimum Wages Order 2020* has been gazetted to stipulate that the minimum rate of monthly wages payable to an employee who works in a place of employment in any City Council or Municipal Council areas as specified in the Schedule shall be RM1,200. The minimum rate of monthly wages payable to an employee who works in a place of employment in any other areas shall be RM1,100.

The above does not apply to a domestic servant as defined under Section 2(1) of the Employment Act 1955, Section 2(1) of the Sabah Labour Ordinance and Section 2(1) of the Sarawak Labour Ordinance.

The above Order comes into operation on 1<sup>st</sup> February 2020 and the Minimum Wages Order 2018 is revoked.

**Note:** For further info relating to the Minimum Wages Order 2018, kindly refer to our *Tax Flash - December 2018 issue*.

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